



**FOOD SERVICE AND COMMISSARY CONTRACT BETWEEN WASHINGTON  
COUNTY  
AND SUMMIT**

2019 APR - 2 A  
BECKY LEWIS  
PROSECUTOR  
CO. WASHINGTON  
9:06

FILED

This contract is made and entered into this 20<sup>th</sup> day of April 2019, by, and between Washington County (hereinafter referred to as "County") having an address of 280 N. College Ave., Suite 530, Fayetteville, AR 72701 and Summit Food Service (hereinafter referred as "Contractor") with a business located at 500 East 52<sup>nd</sup> Street North, Sioux Falls, South Dakota 57104.

**WHEREAS**, County operates and maintains the Washington County Jail and desires to contract for food services and commissary services as described herein with the Contractor.

**NOW THEREFORE**, County and Contractor agree to the following:

**1.0 FOOD AND SUPPLIES**

**1.1 Procurement of Food**

The Contractor shall maintain rigid procurement procedures throughout the entire process of purchasing, receiving, storage, and inventory of all foods and direct supplies and shall pay for all food products related to food production, service and management applicable to the contract. All food and supplies offered are subject to availability. Contractor reserves the right to make food and supply substitutions when market conditions dictate or items become unavailable for any reason beyond Contractor's control. All substitutions will be made with comparable products.

**1.2 Frequency of Meals**

The Contractor shall provide dietary services and proposed training to provide three (3) meals per day including one (1) hot meal at breakfast, one (1) hot meal at lunch, and one (1) hot meal at dinner. Regular meal times shall be with no more than fourteen (14) hours between the evening meal and the following day's breakfast meal. The Contractor shall provide a sack lunch to inmates who miss the service of the regularly scheduled meal. The sack lunch shall meet the nutritional needs of the inmates. Doctor ordered medical snacks and name brand nutritional supplements may be required and will be charged for separately.

**1.3 Meal Counts**

The County shall provide the number of meals to be prepared for each meal/sack lunch which shall be called the "Census Count". All meal count orders will be given to the Contractor at least two hours prior to serving time for meals. The official daily billing count shall be Census Count or the actual count, whichever is greater. All additional County authorized "Caterings" shall be billed separately based on a mutually agreed upon price.

Staff meals will be billed at a rate of \$2.00 per meal and staff meals will not be included in the inmate meal count to determine the scale.

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**1.4 Menu Cycles**

The Contractor will provide dietitian approved meals on, at least, a 4-week menu cycle including providing options for medically restricted diets, religious diets, religious non-pork diets, Kosher, vegetarian and vegan diets.

**1.5 Menu Planning**

Menus shall be planned by the Contractor in accordance with the National Academy of Sciences to meet the nutritional needs of the inmates. The Contractor menus shall provide a variety of foods in adequate amounts to meet the Recommended Daily Allowances (RDAs), and American Correctional Association (ACA) standards. These shall be adjusted for age, gender, therapeutic modifications if needed, and activity level of the inmates. The Contractor shall retain copies of pertinent standards at the individual facilities. The 4-week menu cycle shall provide a weekly average of 3,000 calories daily for adult meals.

**1.6 Menu Review and Approval**

The menus prepared by the Contractor shall be reviewed and approved by a Registered Dietitian, provided at Contractor's expense, who is licensed by the State of Arkansas, in order to ensure compliance. All menus prepared by the Contractor shall be approved by the Sheriff or his/her designee, with such approval not to be unreasonably denied.

**1.7 Recipes and Production Standards**

The Contractor shall maintain standardized recipes and portion control procedures for the County. Standardized recipes must be followed for all food preparation to ensure medical nutrition therapy, nutritional adequacy, and nutrient requirements.

**1.8 Menu Modifications and Substitutions**

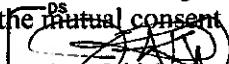
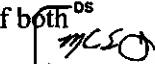
Contractor shall make modifications in the menu, approved by Contractor's registered dietitian, to accommodate medically restricted, religious, religious non-pork, vegetarian, and vegan diets at no additional charge. Any modifications in the menu shall also be approved by the Sheriff or his/her designee.

**1.9 Meal Preparation and Service**

The Contractor shall supervise all meal preparation and service to ensure quality, sanitation, texture, consistency, appearance, therapeutic modifications, and temperature. The contractor shall freeze one sample tray from each meal served for a minimum of 72 hours.

**1.10 Support Services**

The Contractor shall provide standard training for inmate laborers at no cost to County. Consideration will be given to the possibility of providing Vocational Training in Food Service to inmates that have been designated by the Classification Officer as an Inmate Worker. Any Vocational Training taken into consideration under this Contract will not occur until the mutual consent of both

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parties has been obtained in regard to training program to be offered and the party responsible for the cost of the training.

#### **1.11 Processing of Complaints**

The Contractor shall follow County's grievance process and provide a response for addressing complaints from inmates related to food service.

### **2.0 SPECIAL TERMS AND CONDITIONS**

#### **2.1 Excused Performances**

If, because of riots, war, public emergency or calamity, fire, flood, earthquake, act of God, government restriction, or labor disturbance or strike, business operations at the County facility are interrupted or stopped, performance of the contract, with the exception of monies already due and owing, shall be suspended and excused to the extent commensurate with such interfering occurrence. The expiration date of the contract may be extended for a period of time equal to the time that such default in performance is excused.

#### **2.2 Right of Inspection**

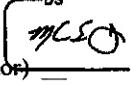
The County or any person or government entity designated by the Sheriff or his/her designee shall have the right of inspection at any time of all food service areas, dining facilities, storage and auxiliary service rooms and the operation of the Contractor with respect to the quality and quantity of food service, the method of service, opening and closing hours, and generally with respect to use, safety, sanitation and the maintenance of said premises. This provision shall not be construed to limit County's ability to enter into the premise with or without notice for any reason.

#### **2.3 Insurance**

The Contractor assumes responsibility arising from the administration or delivery of food services. The Contractor will handle all lawsuits and pay all associated legal costs and settlements, if any, related to the administration or delivery of food services. The Contractor will provide the necessary liability coverage for the food service while the County and Contractor will provide their respective employee's workers comp and employer's liability coverage.

##### **2.3.1 Coverage and Minimum Limits**

<u>Coverage</u>	<u>Minimum Limits</u>
Workers Compensation	Statutory/Arkansas
Employer's Liability Coverage (B)	\$500,000/\$500,000/\$500,000
<u>Commercial General Liability (CGL)</u>	
General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Products and Completed Operations Aggregate	\$2,000,000
Personal and Advertising Liability	\$1,000,000
Umbrella	\$10,000,000

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Automobile Liability (including hired/non-owned)  
Combined Single Limit \$1,000,000

### 2.3.2 Insurance Requirements

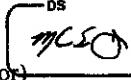
- a. The Contractor is required to maintain the above insurances and keep said insurances in effect during the course of this contract. The Contractor shall provide a Certificate of Insurance listing the County as an additional insured on the Contractor's Commercial General Liability (CGL) policy.
- b. Prior to beginning work, the Contractor shall provide County a current certificate of insurance with the required coverage and limits of insurance issued by an insurance company licensed to do business in the State of Arkansas.
- c. Commercial General Liability includes but is not limited to consumption or use of products, existence of equipment or machines on location and contractual obligations to customers.
- d. These policies shall contain a covenant requiring thirty (30) days written notice by the insurer to County before cancellation, reduction or other modifications of coverage.
- e. In the event of non-renewal, cancellation or expiration of insurance, the Contractor shall provide County evidence of the new source(s) of required insurance within twenty-one (21) calendar days after County's receipt of the thirty (30) day notice.

### 2.4 Indemnification

The Contractor agrees that it will hold harmless, indemnify, and defend County, its Commissioners, officers, agents and employees against any and all claims, expenses (including attorney's fees), losses, damages or lawsuits for damages arising from or related to providing or failing to provide services hereunder, to the extent caused by the Contractor's negligent performance of professional services under this contract and that of its subcontractors or anyone for whom the Contractor is legally liable.

The County agrees that it will hold harmless, indemnify, and defend the Contractor, officers, agents and employees against any and all claims, expenses (including attorney's fees), losses, and damages to the extent caused by County's negligence and the acts of its contractors, subcontractors or anyone for whom County is legally liable.

Neither the County nor the Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

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**2.5 Regular Meetings on Performance**

Recognizing that the successful performance of the contract is dependent on favorable response from the users, the Contractor shall meet regularly with authorized personnel of the County, to effect adjustments in operations and shall cooperate at all times to maintain maximum efficiency and good public relations with inmates and staff.

**2.6 Permits/Licenses**

The Contractor shall be financially responsible for obtaining all required permits and licenses, such as health and food service permits, to comply with pertinent municipal, county, state and federal laws and regulations. All required licenses and permits shall be paid by the Contractor to the appropriate authority.

**2.7 Advertising**

The County shall approve in writing all design, advertising, and/or lettering of textile, polystyrene or paper goods such as paper cups, plates, napkins, prepackaged condiments, menus and similar items, prior to purchase of items by the Contractor.

**2.8 Personnel**

The Contractor shall ensure an adequate staff of employees shall be on duty for the efficient, prompt and sanitary service of food.

**2.8.1 Management Assignment/Requirements**

The Contractor's food service staff shall be subject to the approval of the County.

**2.8.2 Contractor Contact People**

The Contractor shall provide a list of all possible Contractor personnel that may visit, manage or oversee the foodservice operation in the County. This list will contain the person's name, phone number and email address.

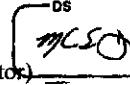
**2.8.3 Personnel Relations**

Personnel relations of employees on the Contractor's payroll shall be the Contractor's responsibility. The Contractor shall comply with all applicable government regulations related to the employment, compensation, and payment of personnel.

**2.8.4 Staff Listing**

The Contractor shall supply the County with a complete list of employees, supervisors and management assigned to work areas at the start of the contract and as frequently thereafter as requested by the County. All employees of the Contractor shall be subject to the approval of the County and will include a criminal background check.

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**2.8.5 Area Security**

All Contractor personnel will follow all County security rules, regulations and policies.

**2.8.6 Prison Rape Elimination Act (PREA)**

If applicable, Contractor shall comply with the County's zero-tolerance policy related to the sexual assault, sexual misconduct or rape of offenders/inmates. Contractor's employees, agents, representative and/or members of its Board of Directors, including volunteers, who have contact with inmates, shall attend and successfully complete any and all staff training(s) related to PREA, as required by the County.

The County shall provide the training(s) at no cost to Contractor. Contractor shall be responsible for expenses incurred, including salary, benefits and/or transportation, in connection with the attendance of mandatory PREA training(s) by its employees, agents, representatives and/or members of its Board of Directors, including volunteers.

**2.8.7 Available Inmate Labor**

Inmate labor will be available for cleaning of facilities and serving of prepared foods. The Sheriff or his/her designee will provide eleven (11) inmates for each meal. The Contractor shall ensure that at no time may inmates supervise other inmates. The Contractor shall provide inmate training. The Sheriff reserves the right to suspend inmate labor being made available to the Contractor at any time that in the opinion of the Sheriff or his/her designee the presence of inmate labor presents a safety or security concern to the facility or to any person present in the facility. If inmate labor is suspended or not adequately provided, Contractor reserves the right to request an increase in the price per meal, which such request should not be unreasonably denied.

**2.8.8 Employment**

The County will not engage the services of any current or dismissed Contractor personnel for one full year after termination of employment or one year after termination of this contract without written consent of Contractor.

**2.8.9 Independent Contractor**

The relationship of the Contractor to the County is and will continue to be that of an independent contractor. The employees of Contractor are not, nor shall they be deemed to be, employees of County and employees of County are not, nor shall they be deemed to be employees of Contractor. Inmate labor shall not be deemed to be employees of the Contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's <sup>spouse</sup> initials (County) <sup>spouse</sup> initials (Contractor) \_\_\_\_\_

agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide services to the County, and is not being retained in any capacity as a joint enterprise or venture with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

## **2.9 Facilities, Equipment and Supplies**

### **2.9.1 Facilities and Office Equipment**

The County shall provide the Contractor with general kitchen facilities, permanently installed food service equipment, storage areas, office space and restroom facilities. The County shall provide the following existing office furniture and equipment for use by the Contractor in the performance of the contract at no charge under the same terms applicable to capital equipment contained in the contract: desks, chairs, filing cabinets, telephone and other equipment as negotiated. Upon termination or expiration of the contract, the Contractor shall vacate the premises and deliver up the premises in the same condition that the premises were in at the time the Contractor entered the premises with reasonable use and wear excepted.

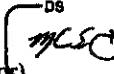
### **2.9.2 County Supplied Food Equipment and Supplies**

The County shall provide the Contractor with the initial inventory of smallwares (i.e., hand utensils, trays, pans, pots, dishes, glasses, silverware, etc.) and all capital equipment at the start of the contract. The County shall also be responsible for the replacement of all smallwares and capital equipment.

### **2.9.3 Contractor Supplied Food Equipment and Supplies**

Contractor shall supply and replenish chemicals (i.e. dish machine chemicals, cleaning chemical, laundry chemicals, floor and equipment cleaning chemicals) and supplies (i.e. trash can liners, food trays, gloves, bags, napkins, nets, cups, bowls, potholders, etc.). The Contractor shall be responsible for its own computers and printers. The Contractor shall provide adequate inventory of employee uniforms, aprons, jackets, CBM caps, etc. as required for Contractor's employees. The County and Contractor shall mutually agree upon selection of employee uniforms. Contractor shall also be responsible for the replacement of Contractor's office supplies.

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#### **2.9.4 Other Equipment**

Other equipment not provided by the County that the Contractor deems to be necessary, shall be provided by the Contractor at its own expense for the start-up of this contract.

#### **2.9.5 Ownership and Removal of Food Equipment and Supplies**

All smallwares, chemicals, supplies and equipment provided or supplied by the Contractor shall remain the property of the Contractor. All smallwares, chemicals, supplies and equipment provided or supplied by the County shall remain the property of the County.

#### **2.9.6 Leased Equipment**

The Contractor shall make contracts for and payments on all leased rental food services related equipment purchased by Contractor.

#### **2.9.7 Repair and Replacement**

The County shall be responsible for repairs and maintenance including those that arise due to normal wear and tear of equipment with the exception that the Contractor shall be responsible for the cost of repair of County food service equipment where it has been determined by the County that damages were due to the Contractor's gross negligence or the gross negligence of the Contractor's employees, staff, agents or subcontractors. For any new equipment that is placed by the Contractor, the Contractor shall be responsible for the repair/replacement of Contractor's equipment.

#### **2.9.8 Vehicle**

The Contractor will not need to provide a transport vehicle for the delivery of food service.

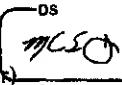
#### **2.9.9 Initial Inventory**

Upon the start of the contract, Contractor may purchase County's inventory, said inventory to be usable and not obsolete. The inventory will be priced at a cost similar to what Contractor would have paid using one of Contractors current vendors. Upon termination of the contract, County will have the option to purchase the ending inventory back from the Contractor on the same basis.

### **2.10 Space Use**

#### **2.10.1 Use of Space/Utilities**

The County shall permit the Contractor to use all space assigned by the County for food service operations and other spaces deemed necessary to carry out the terms of the contract.

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#### **2.10.2 Use of Dining and Service Areas by County**

The County may, without interfering with normal food service, use the dining and service areas from time to time for other purposes. Appropriate setup and cleanup for such other purposes shall be undertaken by County personnel at no cost to the Contractor.

#### **2.10.3 Facility Security**

The Contractor is responsible for control of keys and other entry devices obtained from the County for Contractor's employees and for the security of those areas that are used by its employees, staff or subcontractors.

#### **2.10.4 Lock/Cylinder/Key Installation and Replacement**

The Contractor shall be responsible for the cost for replacement of lost keys and the cost of re-keying and replacement of lock cylinders required as a result of its negligence and/or loss of keys.

#### **2.10.5 County Security**

The County shall provide the Contractor with safety and security services inside the County's facilities.

### **2.11 Utilities/Telephone**

#### **2.11.1 Utilities**

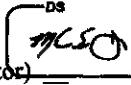
The County shall provide heat, air conditioning, sewer, electricity, natural gas and cold/hot water to those facilities. The Contractor agrees to exercise care to keep these energy services to a minimum and comply with established energy conservation practices, regulations and policies, and mutually endeavor to conserve the use of energies. Food loss that results from a loss or interruption of power shall be the responsibility of County. The County shall provide all utilities necessary for normal food service operations.

#### **2.11.2 Telephone/ Internet**

The County shall provide the Contractor with telephone service (local) and internet service. The Contractor shall have access to local service utilizing equipment provided by the County. County shall pay for all long distance telephone fees. The County shall pay for equipment repair and replacement, and line maintenance for the telephone and internet service.

#### **2.11.3 Uninterrupted Service**

The County shall guarantee an uninterrupted supply of water, steam, electricity, gas, telephone, heat, or high/low temperature refrigeration barring acts of God, natural or manmade disasters and interruptions of the utility services listed in this section that are outside of the County's control.

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## **2.12 Sanitation, Safety and Inspections**

### **2.12.1 Cleanliness and Sanitation**

The Contractor shall adhere to the highest standards of cleanliness and sanitary practices to ensure continual sanitation in all functions of matters related to the execution of the terms of the contract including food handlers' appearance and performance in the preparation, service, transport, and storage of food and related items. The Contractor shall comply with the Arkansas Department of Health, Food Service Health and Sanitation guidelines and regulations.

### **2.12.2 Safety Requirements**

All materials, equipment and supplies provided by the County and Contractor must comply fully with all safety requirements as set forth by State and Federal law.

### **2.12.3 Facility Inspections**

Authorized agents of County shall have complete cooperation and access to all food service, production and storage areas and records on inspections that they may conduct.

### **2.12.4 Housekeeping and Sanitation Responsibilities**

The Contractor shall provide daily housekeeping and sanitation services in the food service, production and storage areas.

### **2.12.5 Globally Harmonized System (GHS)**

Contractor has adopted and will comply with OSHA's Hazard Communication Standards. A list of the hazardous materials and chemicals (as defined under 29CFR 1910.1200) that are used in the course of the Contractor's food service activities that require a Safety Data Sheet (SDS) will be maintained onsite. The Contractor will make this list and the SDS sheets readily available to all County employees. Contractor will notify County when any new items have been added to the aforementioned list.

### **2.12.6 Stripping and Sealing of Floors**

The County shall be responsible for the periodic stripping, sealing and waxing of floors in the food service areas as determined by mutual agreement.

### **2.12.7 Pest Control**

The County shall be responsible for the costs and maintenance of insect and pest control in all food service, production and storage areas.

### **2.12.8 Trash Removal**

The Contractor shall adhere to applicable state [ ]  
Initials (County) [ ] Initials (Contractor) [ ]

recycling and waste disposal requirements. The Contractor shall be responsible for the removal of trash and garbage from food service and production operation to dumpsters or other sites designated by County.

**2.12.9 Waste Containers**

The County shall provide waste containers in sufficient quantity to maintain sanitary standards for trash disposal. Waste containers shall be kept in a clean and satisfactory condition at all times and emptied by the Contractor.

**2.12.10 First Aid Equipment**

The County shall be responsible for the costs of a basic first aid kit and related supplies in all production and service areas.

**2.12.11 Fire Extinguisher System**

The County shall furnish and maintain fire extinguisher equipment and supplies, including automatic hood extinguisher systems.

**2.12.12 Hood Ducts and Vent Cleaning**

The County is responsible for the periodic cleaning of hood ducts, plenums and related vents and fans. The Contractor shall be responsible for routine day to day cleaning and maintenance of hood vents. The Contractor shall notify the County in writing at any time it believes that the hood ducts, plenums and related vents and fans are in need of cleaning.

**2.13 Statements, Audits, Payments, and Billings.**

**2.13.1 Weekly Billings**

The Contractor shall submit to the County, on a weekly basis, an invoice for the actual meals served. These invoices must be processed for payment within thirty (30) days.

**2.13.2 Reporting Period**

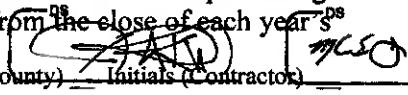
The Contractor's year-to-date reports shall correspond with the County's fiscal reporting period. A month shall be a calendar month. A week shall run from Thursday through Wednesday.

**2.13.3 Review of Yearly Operating Reviews**

Upon request of the County, the Contractor shall meet with the County and review each year's operation, explain deviations, discuss problems, and mutually agree on courses of action to improve the results of the required services.

**2.13.4 Record Retention/Audits**

The Contractor shall retain all financial records and statements pertaining to the contract for a period of three (3) years from the close of each year's

  
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operation.

#### **2.13.5 Other Services and/or Sales**

Sales tax applies to all direct sales of meals to employees and visitors. Contractor shall be responsible for collecting and remitting the necessary sales tax payments.

### **3.0 STANDARD TERMS AND CONDITIONS**

#### **3.1 Deviations and Exceptions**

Deviations and exceptions from terms, conditions, or specifications shall be described fully on the Contractor's letterhead, signed and attached to the request. Any deviation or exception from terms, conditions or specifications shall be approved by the County.

#### **3.2 Applicable Law**

This contract shall be governed under the laws of the State of Arkansas. The Contractor shall at all times comply with and observe all federal, state and local laws, ordinances, and regulations that are in effect during the term of the Contract, and any extension thereof, and which in any manner affect Contractor's work, conduct or performance under this Contract.

#### **3.3 Contract Assignment**

No right or duty in whole or in part of the Contractor under the contract may be assigned or delegated without the prior written consent of the County.

#### **3.4 Recycled Materials**

Contractor will make every effort to support any commitment the County has to encourage the purchase of recycled materials whenever technically or economically feasible or required by law.

#### **3.5 Commissary**

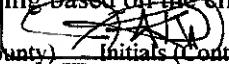
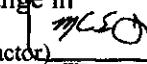
Commissary operations will be considered a part of this Contract and the terms and conditions of the commissary operations are attached to this Contract as Exhibit A.

#### **3.6 Contract Term**

This Contract will commence on the 20<sup>th</sup> day of April, 2019 and terminate on the 19th day of April, 2020. The County, upon mutual agreement with the Contractor, shall have the option to renew this Contract for additional one (1) year periods, with the same terms and conditions.

#### **3.7 Contract Adjustments**

After the first year of the initial contract term and each year thereafter, and each year of any renewal term, the parties may, by written amendment to this Contract in compliance with Section 4.0 adjust the contract pricing based on the change in ps

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CPI (Consumer Price Index) "Food Away From Home Index – Midwest Region" for the previous year. Said Index is published by the Department of Labor Bureau of Statistics. Additional adjustments may also be made upon mutual consent of both parties.

### 3.8 Contract Payment

In consideration of all conditions enumerated in this contract, the Contractor agrees and the County agrees that when the facility is ready to serve inmate meals the County agrees to pay the following price per meal where Contractor will provide three meals per day (hot, hot, hot) for the period from April 20, 2019 through April 19, 2020:

Scale	PPM
475-500	\$1.152
501-525	\$1.121
526-550	\$1.095
551-575	\$1.071
576-600	\$1.050
601-625	\$1.030
626-650	\$1.011
651-675	\$0.995
676-700	\$0.979
701 and above	\$0.966

- All staff meals shall be billed at \$2.00 per meal.
- All sack meals will be billed at the rate of \$0.40 greater than the inmate meal.
- Kosher and Halal meals will be billed at the rate of \$3.50.
- Prepackaged Kosher/Halal meals will be billed at the rate of \$6.50.
- All name brand nutritional supplements will be billed at \$1.50 each.
- All doctor ordered medical snacks will be billed at \$1.00 each.
- The count to be used for billing shall be Census Count or the actual count whichever is greater.

### 3.9 Termination

Either party may terminate this Contract for convenience by providing the other party sixty (60) days written notification. In case of such termination, the Contractor shall be entitled to receive payment from the County for work completed prior to the termination date in accordance with the terms and conditions of this Contract and the County shall be entitled to receive payment for any commissions due in accordance with this Contract. Terms of this Contract shall remain in place until succeeded by a new contract, amendment or successor.

### 4.0 Entire Agreement

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This written contract with referenced parts, attachments and addendums shall constitute the entire agreement and no other terms or conditions in any document, acceptance or acknowledgment shall be effective or binding unless expressly agreed to in writing by all parties to this Agreement. Any future amendments to the contract shall be in writing and attached to the original contract as an addendum. Any dispute arising from the terms and conditions of the contract that cannot be resolved by mutual agreement or through arbitration/mediation shall be tried in Fayetteville, Arkansas.

**WASHINGTON COUNTY:**

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PAGE 2 OF 24  
Judge Joseph K. Wood  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Witness County Clerk

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Brian Lester  
Washington County, Arkansas  
March 29, 2019

**SUMMIT:**

DocuSigned by:

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Marlin C. Sejnoha, Jr.  
President & CEO

DocuSigned by:

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Witness President

Initials (County) \_\_\_\_\_ Initials (Contractor) \_\_\_\_\_

## EXHIBIT A COMMISSARY

1. **GRANT:** The County hereby grants Contractor exclusive rights to provide commissary goods and services for the County's adult inmates of Washington County Jail.

2. **OPERATIONAL RESPONSIBILITIES:**

A. **Grant:** Contractor shall provide a selection of food products, snacks, candy and gum, clothing, personal hygiene items, health and drug items, and general merchandise (collectively, the "Products"), all of which shall be subject to the approval of the Sheriff.

Contractor shall provide CBM Caring Packs offered to the inmate's family or friends through the CBM Cares program for delivery to the inmate.

Contractor shall provide a snack cart that will be offered to the inmates.

Contractor will offer secure inmate email when County agrees to make it available to the inmates.

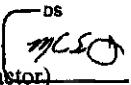
B. **Distribution:** The Contractor shall deliver commissary items, care packs, and snack cart items to adult inmates at the County two (2) times a week. At the request of County jail officials the number of commissary deliveries per week may be changed upon the mutual consent of both parties.

No items shall be distributed that have exceeded their "use by," sell by or similar expiration date. It is the parties' intent that items be fresh and wholesome.

C. **Delivery:** Inmate commissary orders will be delivered in individual clear bags or clear containers with a receipt to include a list of items and the inmate funds charged. This receipt is to be signed by the inmate with a copy given to the inmate and a copy retained by the Contractor (to be produced upon request of the Sheriff.). All such deliveries are to be coordinated with and supervised by Correction Officers.

D. **Ordering:** Inmate orders will be placed via kiosk or through Contractor's website ordering system to be available to the inmate's family and friends for any easy and secure way to purchase CBM Care Packs using a credit card, debit card, or Pay pal.

Contractor will be responsible for all orders placed by the inmate's family and friends in advance of the delivery date. All sales shall be deemed made when a CBM Caring Pack is purchased on-line through the CBM Cares Program unless Contractor is responsible for an error with the order. No returns shall be accepted unless the inmate, for whom the order was placed, has been released prior to the delivery of the Caring Pack.

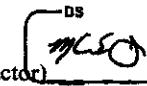
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Orders processed through CBM Cares website will be subject to a \$1.50 transaction fee ("Convenience Fee") which is used to cover merchant processing fees and ongoing software maintenance fees. Convenience fees are not subject to any commission.

- E. Personnel: Contractor shall provide a regional district manager, and from Contractor's headquarters location, will provide expert administrative and purchasing advice related to the commissary operations.
- F. Fill Rate: Contractor will maintain sufficient supplies and quality control of its delivery system so that at least 95% of the items are delivered consistently and correctly on the first attempt. This percentage is based upon the overall item count and not on the number of inmate orders. Contractor's employees will correct any error or missed item and deliver the same within a reasonable time.
- G. Snack Cart: The Snack Cart shall be filled and offered to inmates two (2) times per week on days and at times mutually agreed upon by both parties. The snack cart will be operated by the Contractor's on-site employee's. All product to be delivered via the snack cart will be prepaid by the inmates.
- H. Facilities and Equipment: Contractor will install twenty-seven (27) pod kiosk, one (1) lobby ATM kiosk, one (1) booking kiosk, and two (2) printers. Any additional equipment needed shall be determined upon mutual consent between Contractor and County.

All equipment and products shall at all times remain the property of the Contractor. Contractor shall remove equipment and software promptly upon expiration or termination of the Contract. Any and all electronic data produced from the software during the contract period will remain the property of the County at Contracts end and will be returned to County once removed from the hardware.

- I. Repair and Replacement: Contractor shall be responsible for repairs that arise due to normal wear and tear of equipment. Contractor shall be responsible for any loss or damage to equipment resulting from vandalism, theft or abuse.
- J. Fund Transfer and Technology: Contractor shall install such Computer Hardware and related equipment and software (collectively "Computer Equipment"), including but not limited to Contractor's Software Commissary Management Information Systems (the "Software System") as necessary to support Contractor's commissary operations. Contractor shall remove all Computer Equipment upon expiration or termination of this Contract. The Computer Equipment and Software System is and shall at all times be owned by Contractor, which shall hold all rights relative thereto except as may be expressly granted hereunder and then only to the extent of such express grant. All use of the Software System at the Facility shall immediately cease upon the expiration or termination of this Contract. Contractor shall be responsible to

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support and maintain all Computer Equipment during the term of this Contract, but any and all such obligations shall cease upon the termination of this Contract.

Contractor will cause the Software System to integrate (this may be accomplished by periodic data transfer) with the Sheriff's jail records management system and will debit an inmate's fund for purchases and maintain real time records. Items not actually received by the inmate will be promptly credited to his/her account within three business days of the first delivery date.

3. **BILLING AND PRICES:** Contractor shall determine the prices at which products shall be sold, however, the prices shall not exceed the general prices at which similar products are sold in the convenience stores (the "Comparable Retail Values") in the surrounding local community. If Contractor sustains in its costs, including but not limited to, increases in its products or sales tax, Contractor may, with Sheriff's approval, increase prices to recover such increased costs immediately. Additionally, Contractor may, on an annual basis perform a price audit to compare the prices at which it sells the products contemplated by this Contract with the Comparable Retail Values at which similar products are being sold in the surrounding local community. In the event that any of Contractor's prices are below the Comparable Retail Values, the parties shall agree to increase such prices under this Contract to reflect the Comparable Retail Values. Contractor may make approved additions to the available products, but suggested additions should not be offered more than once every four (4) months. Sales tax will not be included in the commissary prices.

Emails will not be available at the onset of the Contract but when it does become available Contractor will offer secure inmate email at a cost to the inmate of \$0.50 per transaction. This email transaction fee will be charged to the inmate's commissary account and be withdrawn from the inmate's commissary account.

Contractor shall supply hygiene kits to indigents as requested by the Sheriff's Office at no cost to the County.

The Sheriff may place dollar limitations on inmates' purchases, which the Sheriff may periodically adjust.

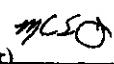
Contractor will electronically provide monthly statements to the Sheriff to include:

- a. Items purchased and prices, listed by item
- b. Inmate purchases (items and prices), listed alphabetically by inmate
- c. Total price of items sold and commission

Contractor shall furnish the above reports no later than the 15<sup>th</sup> of the following month.

Contractor will pay the County for commissions after Contractor has received payment from the County for the applicable invoices.

Contractor will pull funds from the inmate's account on a weekly basis for all

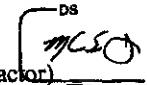
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commissary products and services delivered to inmates.

4. **TAXES:** Contractor will be responsible for the collection and remittance of all applicable sales tax to the State of Arkansas.
5. **COMMISSION:** Contractor shall pay a monthly commission on commissary items to the County of 33% percent of net sales. Net sales are defined as total gross sales minus sales tax, postal products, credits and any other items sold at cost or no mark-up.

Contractor agrees to pay County a commission of 33% percent of net sales on all Snack Wagon items. Net sales are defined as total gross sales minus sales tax, postal products, credits and any other items sold at cost or no mark-up.

Contractor agrees to pay County a commission of 33% percent of net sales on all CBM Caring Packs. Net sales are defined as total gross sales minus sales tax, postal products, credits and any other items sold at cost or no mark-up.

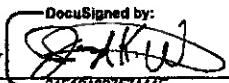
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**ADDENDUM**

1. Notwithstanding anything herein to the contrary, if any party is required to take legal action to enforce the provisions of this contract, then the prevailing party shall be entitled to recover all costs and expenses, including attorney's fees.
2. Notwithstanding anything herein to the contrary, no indemnification or arbitration provisions shall be effective.
3. Notwithstanding anything herein to the contrary, Arkansas law shall apply and venue shall lie in Washington County, Arkansas.
4. Notwithstanding anything herein to the contrary, Washington County shall not be obligated to pay any interest nor is it by the execution of the agreement herein as it is prohibited from doing such by Arkansas law.
5. Notwithstanding anything contained in this Agreement to the contrary, if the Washington County Quorum Court fails to appropriate funds for subsequent periods within the term of this Agreement, the County shall not be obligated to make payments beyond the then current fiscal appropriations period.
6. The Company agrees, as a vendor to the County, to abide by all applicable Federal, State and Washington County statutes, regulations and rules, including but not limited to Equal Employment Opportunity and Drug-Free Workplace laws.
7. The Company agrees that it is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.
8. Failure to execute this addendum shall nullify the *entire* contract.

**THE COMPANY'S ONLY REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AT THE END OF THE PERIOD WHICH NOTICE IS GIVEN AND TAKE POSSESSION OF ANY EQUIPMENT OWNED BY THE COMPANY. COMPANY SHALL BE ENTITLED, HOWEVER, TO ANY PAYMENTS DUE AND OWING DURING ANY PREVIOUS PERIOD.**

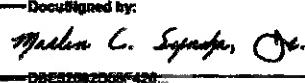
Washington County, Arkansas

BY:   
JOSEPH K. WOOD, County Judge  
(rev.02/18)

Dated: March 28, 2019

Approved as to form by  
Brian R. Lester  
Washington County Attorney  
280 N. College Ave., Suite 500  
Fayetteville, AR 72712  
479-444-1700  
blester@co.washington.ar.us

Summit Food Service

BY:   
Marlin C. Sejnoha, Jr.  
DRE#20025505420

Printed Name: Marlin Sejnoha

Dated: March 29, 2019